

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ISAIAH CHRISTOPHER,

Plaintiff,

AMENDED
COMPLAINT

-against-

THE CITY OF NEW YORK, SGT. KING,
SGT. VIVAR DIEGO, PO HARRIS HASKOVIC,
JOHN & JANE DOE POLICE OFFICERS,

Civ. No. 14 cv 508

PLAINTIFF DEMANDS
A TRIAL BY JURY

Defendants.

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Plaintiff, by his attorneys, GIORDANO LAW OFFICES, PLLC, complaining of Defendants, respectfully alleges upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 *et. seq.* for an incident of police misconduct and deprivation of protected rights, including those rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, that transpired on or about August 28, 2013 and thereafter, when police officers employed by THE CITY OF NEW YORK, including SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS assaulted, battered, wrongfully detained, falsely arrested, and maliciously prosecuted Plaintiff ISAIAH CHRISTOPHER in Bronx County Criminal Court.

STATEMENT OF FACTS

2. On or about August 28, 2013 at approximately 2:25 a.m., Plaintiff was in a livery cab with a few of his friends in the vicinity of 168th Street and University Avenue, Bronx, NY.

3. While riding in said livery cab at said location, an unknown individual in another vehicle began shooting in the vicinity of the livery cab. When the shots were fired, the livery cab

driver became fearful and sped away from the location where shots were being fired. The driver was driving rapidly and was not obeying traffic regulations, fearful of the shooting.

4. After the livery cab driver ran a red light, he pulled the car over in the vicinity of 168th Street and University Avenue, Bronx, NY. All occupants of the vehicle began to disperse and run, including Plaintiff, fearful of being hit by a bullet.

5. As Plaintiff ran from the area to seek cover, he was tackled and stomped on by Defendant police officers. Plaintiff indicated to the Defendants that he was trying to get away from the shooting, that he had done nothing wrong and that he did not have any weapon of any kind. Defendant police officers refused to listen to Plaintiff, failed to attempt to find the shooters, stomped on Plaintiff's back while he was handcuffed and punched him in the face.

6. Plaintiff was thrown in a police car and transported to the 44th Precinct where he was held for over 24 hours.

7. Defendant police officers arrested Plaintiff without probable cause, falsely charged him with Disorderly Conduct, Resisting Arrest and Obstruction of Governmental Administration.

8. Defendants refused to provide Plaintiff with emergency medical treatment when he was held at the Precinct.

9. After Defendants concocted the bogus charges against Plaintiff, all such charges were completely dismissed, there being no justifiable or valid basis for such charges.

JURISDICTION AND VENUE

10. This Court has federal question jurisdiction pursuant to 28 U.S.C § 1331 in that this action arises under 42 U.S.C. § 1983 *et. seq.*, and the Fourth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over the state law claims pursuant to 28

U.S.C. § 1367 and the doctrine of pendent jurisdiction, since the state claims arise from the same operative facts and are part of the same case or controversy.

11. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant THE CITY OF NEW YORK resides in this District. Additionally, all Defendants are subject to personal jurisdiction in this District.

12. Prior to the commencement of this action, and within ninety days after the claim arose, Plaintiff caused a Notice of Claim in writing to be served upon the Defendant THE CITY OF NEW YORK, by delivering to and leaving the same with the New York City Comptroller's Office, in like manner as the service of a summons in the District Court, which said Notice of Claim set forth the names and post office addresses of Plaintiff and her attorney, the nature of, time when, place where, and manner in which the claims arose, and the items of damage and/or injuries claimed, or that might have been sustained, so far as it was practicable.

13. Over thirty days have elapsed since the service of such Notice of Claim, and THE CITY OF NEW YORK has failed to settle or adjust this matter.

14. This action was commenced within one year and ninety days after the cause of action herein accrued.

THE PARTIES

15. At all relevant times, Plaintiff ISAIAH CHRISTOPHER was and remains a resident of Bronx County, New York.

16. At all relevant times, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS acted in their official capacities and were employees, agents, or servants of Defendant THE CITY OF NEW YORK, acting under color of state law, within the meaning of 42 U.S.C. § 1983 *et. seq.*

17. THE CITY OF NEW YORK was and is a municipal corporation organized and existing under and pursuant to the laws of the State of New York. At all relevant times, Defendant THE CITY OF NEW YORK acted through its employees, agents and/or servants, including the individually named Defendants herein, who at all relevant times acted within the course and scope of their employment.

18. Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS are employees acting within the scope of their employment as officers of the New York City Police Department.

19. Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS are employees acting within the scope of their employment as officers of the New York City Police Department.

**AS AND FOR A FIRST CLAIM OF FALSE ARREST PURUSANT TO 42 U.S.C. § 1983
AGAINST DEFENDANTS SGT. KING, SGT. VIVAR DIEGO, PO HARRIS
HASKOVIC, JOHN & JANE DOE POLICE OFFICERS**

20. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

21. On or about August 28, 2013 in the vicinity of 168th Street and University Avenue in the Bronx, NY, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested Plaintiff.

22. Plaintiff engaged in no wrong doing or illegal conduct at that time and place and was simply trying to avoid getting shot by an unknown assailant.

23. Without probable cause or justification, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS physically and forcibly handcuffed Plaintiff and arrested him.

24. As a result of the foregoing, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.*, deprived Plaintiff of rights secured by the Constitution and laws of the United States, including those rights protected by the Fourth and Fourteenth Amendments, their right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

25. As a result of the foregoing, Plaintiff suffered loss of liberty and life, substantial emotional and psychological pain and was otherwise injured.

26. As a result of the foregoing, Plaintiff demands monetary damages against Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS and further seeks punitive damages against Defendants in an amount to be determined by a jury.

**AS AND FOR A SECOND CLAIM OF MALICIOUS PROSECUTION
PURSUANT TO 42 U.S.C. § 1983 AGAINST DEFENDANTS SGT. KING, SGT. VIVAR
DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS**

27. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if more fully set forth herein.

28. On or about August 28, 2013, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS, acting intentionally,

maliciously and without justification or probable cause, caused a criminal charge to be filed against Plaintiff.

29. Such charge was ultimately dismissed by the Bronx County Criminal Court after it was filed by Defendants.

30. Defendants were aware that such criminal charges were a false charge, that Plaintiff had not committed any crime, and nonetheless decided to and did file such criminal charge against Plaintiff with malice and with a deliberate and reckless disregard to Plaintiff's rights.

31. Defendants had no reason to arrest Plaintiff as it was evident that Plaintiff was not engaged in any criminal activity. Defendants assumed that by arresting Plaintiff, they would be able to coerce information from Plaintiff as to who was firing a gun on a public street at the Plaintiff and his friends. Such efforts are not a legitimate or legal basis for arrest and were effectuated with a deliberate disregard for Plaintiff's constitutional rights.

32. As a result of the foregoing, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.*, and deprived Plaintiff of rights secured by the Constitutions and laws of the United States and the State of New York, including those rights protected by the Fourth and Fourteenth Amendments, her right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitution of the United States and the State of New York.

33. As a result of the foregoing, Plaintiff suffered loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

34. As a result of the foregoing, Plaintiff demands monetary damages against Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE

DOE POLICE OFFICERS and further seeks punitive damages against Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS in an amount to be determined by jury.

**AS AND FOR A THIRD CLAIM FOR ASSAULT AND BATTERY
PURSUANT TO 42 U.S.C. § 1983 AGAINST DEFENDANTS SGT. KING, SGT. VIVAR
DIEGO, PO HARRIS HASKOVIC, JOHN & JANE DOE POLICE OFFICERS**

35. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. On or about August 28, 2013 in the vicinity of 168th Street and University Avenue in the Bronx, NY, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS acted intentionally and with deliberate indifference to the rights, life and liberty of Plaintiff by physically attacking, assaulting, and battering Plaintiff without justification or probable cause.

37. As a result of the aforementioned occurrence, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS, acting under color of state law, violated 42 U.S.C. § 1983 and deprived Plaintiff of his rights secured under the Fourth and Fourteenth Amendment of the Constitution of the United States and the Constitution and Art. 1, § 12 of the State of New York including those rights provided by the Fourth and Fourteenth amendments, the right not to be deprived of life, liberty, and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and constitutions of the United States and the State of New York.

38. As a result of the foregoing, Plaintiff sustained personal injuries and other consequential damages.

39. As a result of the foregoing, Plaintiff demands monetary damages against Defendant THE CITY OF NEW YORK in an amount to be determined by a jury.

**AS AND FOR A FOURTH CLAIM FOR FALSE ARREST
AGAINST ALL DEFENDANTS**

40. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

41. As more fully described above, on or about August 28, 2013 in the vicinity of 168th Street and University Avenue in the Bronx, NY, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested Plaintiff, detained him for over twenty-four hours.

42. As a result of the foregoing, Plaintiff suffered loss of liberty and life, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

43. As a result of the foregoing, Plaintiff demands monetary damages against all Defendants, including the CITY OF NEW YORK, and is further seeking punitive damages against SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS in an amount to be determined by jury.

**AS AND FOR AN FIFTH CLAIM FOR MALICIOUS PROSECUTION
AGAINST ALL DEFENDANTS**

44. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

45. On or about August 28, 2013, Defendants, acting intentionally, maliciously and without justification or probable cause, caused to be filed an accusatory instrument or otherwise

brought criminal charges against Plaintiff, who was criminally prosecuted therefore until such prosecution was terminated in his favor.

46. Defendants filed such charges knowing that such charges were false, because Plaintiff had committed no crime, and such charge was filed with malice and deliberate disregard for Plaintiff's rights.

47. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

48. As a result of the foregoing, Plaintiff demands monetary damages against all Defendants and is further seeking punitive damages against SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS in an amount to be determined by a jury.

**AS AND FOR AN SIXTH CLAIM FOR ASSAULT & BATTERY
AGAINST ALL DEFENDANTS**

49. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

50. On or about August 28, 2013 in the vicinity of 168th Street and University Avenue in the Bronx, NY, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS acted intentionally and with deliberate indifference to the rights, life and liberty of Plaintiff by physically attacking, assaulting, and battering Plaintiff without justification or probable cause.

51. As a result of the aforementioned occurrence, Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS, acting

under color of state law, violated 42 U.S.C. § 1983 and deprived Plaintiff of his rights secured under the Fourth and Fourteenth Amendment of the Constitution of the United States and the Constitution and Art. 1, § 12 of the State of New York including those rights provided by the Fourth and Fourteenth amendments, the right not to be deprived of life, liberty, and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and constitutions of the United States and the State of New York.

52. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

53. As a result of the foregoing, Plaintiff demands monetary damages against all Defendants and is further seeking punitive damages against SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS in an amount to be determined by a jury.

WHEREFORE, Plaintiff demands the following relief jointly and severally against all of the Defendants:

- a. Compensatory damages;
- b. Punitive damages against Defendants SGT. KING, SGT. VIVAR DIEGO, PO HARRIS HASKOVIC, and JOHN & JANE DOE POLICE OFFICERS;
- c. Convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
February 20, 2014

Giordano Law Offices PLLC

By: _____

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